

Law Offices of
DANIEL F. GALLERY
A Professional Corporation
926 J Street, Suite 505
Sacramento, CA 95814-2786

Telephone: (916) 444-2880
FAX: (916) 444-6915
Email: dgallery@gallervlaw.com
jbarton@gallervlaw.com
jcashman@gallervlaw.com



June 6, 2005

Reclamation Board Staff

RE: Caltrans Joint Use Agreement and Reclamation Board Permit 17035GM

Dear Staff:

As I promised during my presentation to the Reclamation Board on April 15, 2005, enclosed are what I believe to be all the relevant documents involving Reclamation Board Permit 17035GM. It is hoped that by having all of the information available, a solution may be more quickly reached. I look forward to our meeting on the 14th.

Attachment 1 – A copy of the memo provided to the Reclamation Board on April 15, 2005

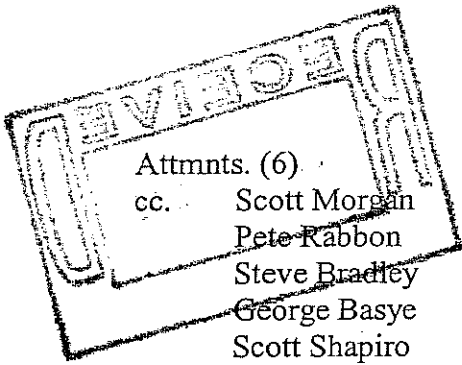
Attachment 2 – Reclamation Board Permit 17035GM, dated June 7, 2001

Attachment 3 – Water Code Sections 8700-8709.4, with specific reference to Sections 8708 and 8709

Attachment 4 – The Memorandum of Understanding pursuant to which Caltrans agreed to enter into a Joint Use Agreement with each of the local district affected by the guardrailing, dated September 24, 2002

Attachment 5 – Letter from Caltrans legal counsel discussing why Caltrans will not agree to the last sentence in Section 6.4 of the proposed Joint Use Agreement, dated January 5, 2005

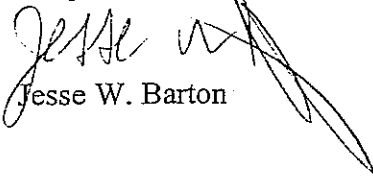
Attachment 6 – The most recent draft of the Joint Use Agreement, dated June 6, 2005



Attnmts. (6)

cc. Scott Morgan
Pete Rabbon
Steve Bradley
George Basye
Scott Shapiro
Doris Alkebulan
Juan Mercado
Henry Matsunaga
Russ Eckman

Very truly yours,


Jesse W. Barton

Law Office of
DANIEL F. GALLERY
A Professional Corporation
926 J Street, Suite 505
Sacramento, CA 95814-2786

Telephone: (916) 444-2880
FAX: (916) 444-6915
Email: dgallery@gallerylaw.com
jbarton@gallerylaw.com

MEMO

DATE: April 15, 2005
TO: Reclamation Board Members
FROM: Jesse Barton (Attorney representing Reclamation District 341 – Sherman Island)
RE: Reclamation Board Encroachment Permit Issued to Caltrans

++++++

Dear Board Members:

The purpose of my presentation today is to request a hearing in front of the full Board to discuss the failure of Caltrans to execute a Joint Use Agreement (JUA) with local reclamation districts as part of a requirement in an encroachment permit issued by the Board.

This issue affects Reclamation Districts 3, 341, 349, and Brannan Andrus Levee Maintenance District (the "Districts"). I am here representing only Reclamation District 341.

The requirement for this JUA was the result of Caltrans installing guardrail on levees the districts maintain. Before Caltrans was allowed to install the guardrail, the Board required Caltrans to obtain from the Board an encroachment permit for the installation of the guardrails. Caltrans complied with the Board's request and obtained permit number 17035 GM. Term Twenty-Six of this permit required Caltrans to enter into a Memorandum of Understanding (the "MOU") with the Board, which would be designed to "bring resolution...to the unresolved issues concerning the effect of levee operations, maintenance, and repair due to implementation of the proposed project."

The Board most likely included this term in the permit because it knew that the installation and presence of guardrail on the levees would jeopardize the ability of the

Districts to repair and maintain the levee structures. The Board hoped to avoid these complications and resolve these difficulties through the MOU.

Pursuant to Permit Term Twenty-Six, Caltrans entered into the MOU with the Board on August 23, 2002. Section IV, subsection A of this MOU, to which Caltrans agreed, states:

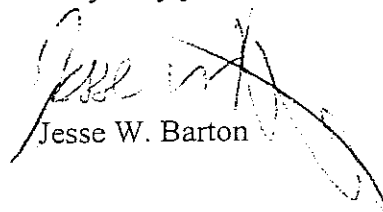
It is agreed between [Caltrans] and the [Reclamation Board] that Permittee [Caltrans] will enter into joint use agreements with each of the respective Districts, setting forth the way in which maintenance activities of the Districts and maintenance of the barrier by [Caltrans] will be mutually accommodated. The joint use agreements must resolve the issues concerning the effect on levee operations, maintenance and repair due to implementation of the proposed project in a manner satisfactory to the [Reclamation Board], and such joint use agreement will be completed within three months. (Emphasis added.)

Although Caltrans was required to enter into JUAs with the Districts within three months of the execution of the MOU, Caltrans has failed to do so after almost three full years. Instead, after many months of negotiation, George Basye (as attorney for Rec. Districts 3 and 349, and Brannan-Andrus Levee Maintenance District) and I (as attorney for Rec. District 341) have managed to draft a JUA to which nearly all the parties agree, with the exception of one sentence. The troublesome sentence reads: "The only issue in a claim proceeding shall be the adequacy of the proof by District called for above." The purpose of the sentence would be to prohibit Caltrans from asserting senior rights to the levee if a District submits a claim to the Board of Control for costs the District incurs as a result of working around, or over, the railing, while performing maintenance activities. According to Caltrans, it objects to the sentence because it believes it has senior rights to the levees and should not be subject to a claim by a District.

Legal counsel for the Districts have tried re-drafting the clause several times to make it more palatable to Caltrans, but to no avail. We have now reached an impasse and are hoping the Board can assist us in obtaining resolution to this issue. We sincerely hope we can have a fair JUA in place soon.

If the Board does grant us a hearing, we believe it would be appropriate to invite Caltrans and its legal counsel, as well as George Basye. If granted a hearing, I will be sure to provide each Board member with a short written summary of the facts, as well as include all the relevant documents as attachments.

Very truly yours,


Jesse W. Barton

performance of the duties required of it by this article. (Added by Stats.1943, c. 369, p. 1896.)

§ 8696. Apportionment of engineer's compensation

The compensation of the chief engineer while acting also as assistant to the department shall be apportioned as may be agreed upon between the board and the department. (Added by Stats.1943, c. 369, p. 1896.)

§ 8697. Records

All maps, records and engineering data prepared or obtained by the department for the use of the board shall be deposited in the office of the board and remain part of its records. (Added by Stats.1943, c. 369, p. 1896.)

§ 8698. Extent of cooperation by board

It is the intent of the Legislature that the board shall cooperate with the department in all matters of mutual concern to the fullest extent practicable. (Added by Stats.1957, c. 1932, p. 3404, § 249.)

ARTICLE 6. ENCROACHMENTS ON FLOOD CONTROL WORKS

Section

- 8700. Maintenance of draws on by-pass and overflow channels.
- 8701. Opening of draw; fee.
- 8702. Location.
- 8703. Liability for noncompliance.
- 8704. Enforcement of compliance; remedies.
- 8705. Concurrent and additional remedies.
- 8706. Injunction.
- 8707. Removal and alteration of existing structures.
- 8708. Interference with maintenance and operation of works.
- 8709. Public nuisance; abatement.
- 8709.2. Water side of levee.
- 8709.3. Fences giving way to water; prohibition on water side of a levee; emergency regulations.
- 8709.4. Removal of encroachments on levees, channels, and other flood control works; routine maintenance.

§ 8700. Maintenance of draws on by-pass and overflow channels

Whenever so required and notified by the board the owner and the operator of any railroad, electric railroad, wire line, wagon road or other structure crossing any by-passes or overflow channel, provided for in this part, shall provide and maintain one or more suitable draws or other appliances within the by-pass or overflow channels to permit the passage of watercraft, dredgers or other machines used in the construction of reclamation works. (Added by Stats.1943, c. 369, p. 1896.)

§ 8701. Opening of draw; fee

The draws or appliances shall be opened for any person desiring to pass who gives reasonable notice and pays a fee of fifty dollars (\$50). (Added by Stats.1943, c. 369, p. 1896.)

§ 8702. Location

The draws or appliances shall be located at points designated by the board. (Added by Stats.1943, c. 369, p. 1896.)

§ 8703. Liability for noncompliance

A failure to comply with any of the preceding provisions of this article renders the owner or operator of any of the structures liable to any person for the damages caused to the person by the failure. (Added by Stats.1943, c. 369, p. 1896.)

§ 8704. Enforcement of compliance; remedies

The board may enforce compliance with the provisions of this article by mandamus, mandatory injunction or by any other appropriate remedy authorized by law. The action or proceeding may be commenced and maintained by the board in the name of the State. (Added by Stats.1943, c. 369, p. 1896.)

§ 8705. Concurrent and additional remedies

The remedies provided by this article are not exclusive of, but shall be concurrent with and in addition to, any other remedy which may exist by law. (Added by Stats.1943, c. 369, p. 1896.)

§ 8706. Injunction

The board may maintain actions in the name of the State to compel by injunction the owner or owners of any bridge, trestle, wire line, viaduct, or embankment or other structure or obstruction which shall be intersected, traversed or crossed by any by-pass, drainage canal, channel, or overflow channel, to construct or alter any structure in order to offer a minimum of obstruction to the free flow of water. (Added by Stats.1943, c. 369, p. 1896.)

§ 8707. Removal and alteration of existing structures

The board may in the case of existing works compel the removal or alteration of structures or obstructions that impede the free flow of water. (Added by Stats.1943, c. 369, p. 1896.)

§ 8708. Interference with maintenance and operation of works

Whenever assurances shall have been given to the Secretary of War pursuant to Article 2 of Chapter 3 of this part that the State will maintain and operate works after completion in accordance with regulations prescribed by the Secretary of War, it is unlawful for any person or public agency to in anywise interfere with or obstruct the performance of the maintenance or operation of such works, including, but not limited to, the encroachment upon any land, or right of way or easement thereon, acquired by the board for the maintenance or operation of any levee or other such works. (Added by Stats.1947, c. 653, p. 1694, § 1.)

Section 8615 et seq.

§ 8709

WATER CODE

§ 8709. Public nuisance; abatement

Any use of any such land, right of way, or easement in violation of the preceding section, whether for cultivation, planting of crops or trees, storage or disposal of material, or other encroachment upon, or use of such land, right of way, or easement which does or may interfere with or obstruct such operation or maintenance, constitutes a public nuisance, and the board may commence and maintain a suit in the name of the people of the State for the prevention or abatement of such nuisance. (Added by Stats.1947, c. 653, p. 1695, § 2.)

§ 8709.2. Water side of levee

"Water side of levee" means the area on the levee slope between the edge of the crown nearest the water to the water side levee toe. (Added by Stats.1997, c. 872 (S.B.1068), § 2.)

§ 8709.3. Fences giving way to water; prohibition on water side of a levee: emergency regulations

(a) Fences that are designed to give way during high water events shall not be allowed on the water side of a levee. Fences on the water side of a levee that are partially or wholly under water during high water events, and that are located within state maintenance areas within city limits under the jurisdiction of the board, shall be constructed so as to be removable by the permittee in segments during times of high water events as the water level rises up the levee.

(b) The permittee shall remove the segments of the fence during times of high water events.

(c) The board shall adopt emergency regulations necessary to implement this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. (Added by Stats.1997, c. 872 (S.B.1068), § 3.)

§ 8709.4. Removal of encroachments on levees, channels, and other flood control works; routine maintenance

(a) Before taking action to remove or modify encroachments on levees, channels, and other flood control works pursuant to powers granted by this part or standards adopted pursuant to this part, the board shall make one of the following findings, based on substantial evidence, regarding the encroachment's impact on public safety:

(1) The encroachment presents an imminent threat to the structural integrity of the levee, channel, or other flood control work.

(2) The encroachment significantly impairs the functional capability of the levee, channel, or other flood control work to fulfill its particular intended role in the overall flood control plan.

(b) Routine maintenance that includes the removal or modification of fences, gates, and vegetation on the levee structure and other flood control structures is not subject to subdivision (a). (Added by Stats.1997, c. 872 (S.B.1068), § 4.)

ARTICLE 7. APPROVAL OF PLANS

Section

- 8710. Approval before commencement of construction.
- 8710.1. Interior irrigation or drainage work not actually on flood control works under board's jurisdiction.
- 8710.5. Applicable provisions.
- 8711. Invalidity of plan before board approval.
- 8712. Cutting and alteration of levee; board permission.
- 8713. Raising and strengthening levee; board approval and supervision.
- 8714. Claims against board and drainage district.
- 8715. Emergency work.
- 8716. Notice of emergency.
- 8717. Subsequent approval of work.
- 8718. By-pass and overflow channels; board approval for alterations.
- 8719. Public nuisance; abatement.
- 8720. Misdemeanor.
- 8721. Board consent to change in plans.
- 8722. Board change in plans.
- 8723. Disapproval of plan; grounds.

§ 8710. Approval before commencement of construction

Every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, shall be approved by the board before construction is commenced. (Added by Stats.1943, c. 369, p. 1896. Amended by Stats.1945, c. 233, p. 701, § 1.)

§ 8710.1. Interior irrigation or drainage work not actually on flood control works under board's jurisdiction

The provisions of Section 8710 shall not apply to any work of interior irrigation or drainage upon reclaimed land, which work is not actually on, through, or adjoining any flood control works under the jurisdiction of the board. (Added by Stats.1957, c. 1707, p. 3082, § 1.)

§ 8710.5. Applicable provisions

Whenever any irrigation, drainage, levee, or flood control district makes application for the approval required by the next preceding section, all of the provisions of Division 15, Part 6, Chapter 2 of the Water Code¹ which relate to works of reclamation by reclamation districts within the Sacramento and San Joaquin Drainage District shall be applicable to the works of such

irrigation
(Added
Stats.19
1 Section

§ 8711.

Any s
no work
board.

§ 8712.

sion
No leve
mention
any of th
by the bo
the board

§ 8713.

prov
The ov
mentioned
the levee
specificat
to and a
subject to
Stats.1945

§ 8714.

No claim
drainage
ment or o
8713 in ex
control fo
the board

§ 8715.

Any exist
case of e
where it is
water. (A

§ 8716.

Notice c
to the bo

§ 8717.

All emer
approval c
removal or
1943, c. 369

§ 8718.

al for
No levee
by-pass or
raised, wid
sion of the

June 07, 2001
S.A.S.

STATE OF CALIFORNIA
THE RESOURCES AGENCY
THE RECLAMATION BOARD

PERMIT NO. 17035 GM

This Permit is issued to:

Department of Transportation
801 - 12th Street, Fourth Floor
Mail Station 12
Sacramento, California 95814


To place metal beam guardrails on the waterside of the levee crown (State Route 160) of the Sacramento River. The project is located starting from Paintersville going south for approximately 27.3 miles to Emmaton at Horseshoe Bend (Sections various, T3N, T4N, and T5N, R2E, R3E, and R4E, MDB&M, Reclamation District No. 3 and Brannan Andrus Levee Maintenance District, Sacramento River, Sacramento County).

NOTE: Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project described above.

The Reclamation Board, on the _____ day of _____
19____, approved this application and the plans attached thereto. Permission is granted to proceed with the work described in this application, which is incorporated herein by reference, subject to the following General and Special Conditions.

(SEAL)

Dated: JUN 07 2001


General Manager

GENERAL CONDITIONS:

ONE: This permit is issued under the provisions of Sections 8700 - 8723 of the Water Code.

TWO: Only work described in the subject application is authorized hereby.

THREE: This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

FOUR: The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Reclamation Board.

FIVE: Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Reclamation Board.

SIX: This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 10 days' notice.

SEVEN: It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

EIGHT: This permit does not establish any precedent with respect to any other application received by The Reclamation Board.

NINE: The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

TEN: The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

ELEVEN: The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

TWELVE: Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Reclamation Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

SPECIAL CONDITIONS:

THIRTEEN: All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without the prior approval of The Reclamation Board.

FOURTEEN: The permittee shall maintain the permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources, Reclamation Districts No. 3 and Brannan Andrus Levee Maintenance District, or any other agency responsible for maintenance.

FIFTEEN: The permittee shall notify the Department of Water Resources by telephone, (916) 574-1213, at least ten working days prior to start of work. Failure to do so may result in delays for your project.

SIXTEEN: The Reclamation Board, Department of Water Resources, Reclamation District No. 3, and Brannan Andrus Levee Maintenance District shall not be held liable for any damages to the permitted encroachment(s) within the floodway, levee section, or within 10 feet of the levee toes resulting from flood fight, operation, maintenance, inspection, or emergency repair.

SEVENTEEN: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause.

EIGHTEEN: The project proponent shall be responsible for repair of any damages to the project levee and other flood control facilities due to construction, operation, or maintenance of the proposed project.

NINETEEN: The levee section and work area shall be restored to at least the condition that existed prior to commencement of work.

SPECIAL CONDITIONS FOR PERMIT NO. 17035 GM (Continued)

TWENTY: Cleared trees and brush shall be completely burned or removed from the floodway, and downed trees or brush shall not remain in the floodway during the flood season from November 1 to April 15.

TWENTY-ONE: No material stockpiles, temporary buildings, or equipment shall remain in the floodway during the flood season from November 1 to April 15.

TWENTY-TWO: No excavation shall be made or remain in the levee section during the flood season from November 1 to April 15.

TWENTY-THREE: To provide protection for the State-threatened Swainson's hawk, construction or encroachment activities will only be permitted between August 1 and March 1, unless otherwise permitted in writing by the California Department of Fish and Game with evidence provided to The Reclamation Board.

TWENTY-FOUR: To ensure the protection of valuable riparian habitat, no native trees, shrubs, or other woody vegetation greater than 6 inches in diameter at the base shall be removed or disturbed.

TWENTY-FIVE: The permittee shall conduct a survey to determine whether the federally endangered valley elderberry longhorn beetle and/or elderberry shrubs will be impacted. This survey shall be coordinated with the U.S. Fish and Wildlife Service, Endangered Species Office, at telephone (916) 979-2725. If elderberry shrubs are impacted, a copy of the USFWS permit shall be provided to The Reclamation Board prior to project construction.

TWENTY-SIX: The permittee shall enter into a memorandum of understanding with The Reclamation Board prior to start of construction of the proposed project. This memorandum shall bring resolution, satisfactory to The Reclamation Board, to unresolved issues concerning the effect on levee operations, maintenance, and repair due to implementation of the proposed project.

TWENTY-SEVEN: The permittee shall offset the face of the guardrails as far as practical from the edge of the pavement within the Department of Transportation's right of way constraints.

JOINT USE AGREEMENT

This Joint Use Agreement, hereinafter called "Agreement", is made effective this _____ day of _____, 2004, by and between the Department of Transportation, State of California, hereinafter called "Department", and the [enter Local Reclamation District here], hereinafter called "District".

RECITALS

- A. On October 8, 2002, Department entered into a Memorandum of Understanding with the Reclamation Board, State of California, hereinafter called "Board", that satisfied Board Permit No. 17035 GM, issued to Department on June 7, 2001, acknowledging the placement of Department's metal beam guardrailing, hereinafter called "Railing", on the levee of the Sacramento River along State Route 160, from 4.2 miles north of the Contra Costa County Line north to Paintersville Bridge, on the federally-authorized Sacramento Flood Control Project Levee, part of which levee District is mandated to maintain. The MOU requires that the Department enter into joint use agreements with each of the named reclamation districts within which jurisdiction the Railing is installed.
- B. Department and District each assert the right to the use of the levee crown to perform its operations, maintenance, and repair activities.
- C. This Agreement clarifies the relationship of the Parties as to how the Parties' operations, maintenance, and repair activities will be coordinated due to the presence of the Railing on these levees.
- D. It is the intent of the Agreement to offset, to the extent reasonably possible, any adverse financial impact of the Railing on the District through use of existing Department personnel and equipment, where possible, and thereby minimize or altogether avoid additional expense to the

District. As an example, additional costs incurred to mow or spray the waterside of the levee slope over the Railing may be offset by the Department furnishing Traffic Control Measures to facilitate such maintenance activity.

E. The levee upon which the Railing has been installed is a Project Levee of the federal Sacramento River Flood Control Project, subject to the jurisdiction of the State Reclamation Board. Some portions of the levee upon which the Railing was installed have a greater cross section and crown width than required for a Project Levee. As used herein, the term "Critical Levee Section" applies to that portion of the levee cross section and crown width required to meet Project Levee standards, the locations of which within the levee shall be established by the District.

F. Department and District have each asserted a senior right to the use of the levee crown to perform their operations, maintenance, and repair activities. In order to avoid costly litigation to determine which has the senior right and the extent of that right, the Parties desire to agree to provisions for the orderly operations, maintenance, and repair activities of both the District and the Department, all of which activities are designed to advance public safety. In particular, the Department has represented a desire to coordinate maintenance and repair activities with the District and to pay costs invoiced under Section 6.4 rather than availing itself of the rights provided for under Section 6.10, at least, if at all, until such time as costs paid under Section 6.4 become substantial. Further, in light of the District's limited budget, it too would prefer to not litigate the issues avoided by the execution of this Joint Use Agreement.

Formatted: Bullets and Numbering

AGREEMENT

Now, therefore, Department and District do hereby mutually agree as follows:

1. Routine Maintenance Activities:

1.1 District routine maintenance activities include visual inspection from the levee crown along the shoulder of the roadway, spraying the levee waterside for vegetation control, mowing, trimming, burning, debris removal, and placement of fill or riprap.

- 1.2 Department routine maintenance activities typically include Railing and roadway repair, mowing, litter removal, and tree trimming.
- 1.3 Traffic Control Measures as used in this Joint Use Agreement shall mean, but are not all inclusive of or limited to, shadow vehicles, pilot vehicles, flaggers, and barricades needed for the safety of the traveling public and those engaged in routine maintenance activities.
- 1.4 Department and District shall coordinate an annual schedule of planned routine maintenance activities so that ~~†Traffic Ceontrol~~ ~~Measures~~ and other resources that Department will ~~implement~~utilize during its maintenance activities may be shared with District ~~in order to~~ so that District and Department may perform their maintenance activities jointly. Coordinated schedules should be mutually agreed upon prior to the beginning of the Department fiscal year, which begins each July 1st, with the intent of providing Department and District adequate time to obtain the appropriate anticipated resources to be expended in that upcoming fiscal year. Coordinated schedules may be revised or amended by either Party upon two weeks' notice for routine matters or any lesser period for reasons of weather or emergency. The coordinated schedule shall designate the contact person and one alternate for the District and Department. The designated contact people shall be responsible for communicating between the Parties to ensure understanding of when, where, and how coordinated activities may be conducted.
- 1.5 In the event that District and Department schedules, despite diligent efforts, cannot be coordinated to perform routine maintenance activities jointly, District and Department will proceed with their routine maintenance activities separately. District will perform its routine maintenance activities with Traffic Control Measures in place at its expense, except as provided by Section 6.4, or utilize other resources as described herein. Department will assist District in obtaining any necessary permits for such activities. ~~Any additional costs incurred by the District due to the failure or inability to coordinate routine maintenance activities will be the subject of a reimbursement claim by the District unless the Department~~

~~avoids or minimizes such costs by providing the required maintenance work using its own staff and equipment. (DELETED LANGUAGE IS INTERNALLY CONTRADICTORY)~~

1.6 If, during performance of its routine maintenance activities, ~~In the event that~~ District requires additional Traffic Control Measures, other resources, or additional costs are incurred by District primarily due to the presence or impact of the Railing, District's added costs shall be invoiced to the Department as provided in 6.4 hereinbelow unless Department avoids or minimizes this expense by providing the necessary Traffic Control Measures and/or other resources to assist in the District work.

1.7 District may request Department assistance in providing Traffic Control Measures for added safety while performing routine maintenance activities by coordinating such activities with Department's District 4 Maintenance Delta Region Manager and/or by establishing an Interagency Rental Agreement that will provide District with Department equipment and operator. If such an agreement is executed, implementation will be coordinated through District and Department's District 4 Maintenance Delta Region Manager.

1.8 Weather conditions and environmental constraints will have a major impact on District and Department activities. Coordination will be required to accommodate current weather conditions and constraints, and compliance for environmental regulations and guidelines.

1.9 Maintenance activities such as mowing, spraying, trimming, and burning which may require Traffic Control Measures will need to be coordinated with Department's Traffic Management Plan (TMP) personnel. District shall coordinate with Department's District 4 Maintenance Delta Region Manager who will function as the liaison between District and Department's Traffic Management Planning personnel for all lane closures.

2. Railing and Levee Damage Repairs

2.1 Department is responsible for the integrity of the Railing, highway operating systems, and the roadbed. In the event Department determines that the roadbed and/or Railing need repairs, Department will be responsible to bring the roadbed and/or Railing to operating standards at its expense. If such repairs require consequent repairs to the levee, Department

and District will work cooperatively to bring the levee and the roadbed and/or Railing to operating standards. District will be responsible for expenses involved in such consequent repairs to the levee only to the extent that such repairs would be needed to prevent an adverse effect upon District's Critical Levee Section. Department will be responsible for repairs to the roadbed and Railing as determined to be appropriate by the Department.

2.2 In the event of a declaration of emergency by an appropriate entity or a third party accident, any repairs to the damaged Railing and roadbed will be the responsibility of that third party or the Department. District will be responsible for any repairs to the Critical Levee Section to the extent it determines necessary and that the damage to the levee was not solely due to the presence of the Railing. In all cases, Department and District will work in cooperation with each other to quickly and efficiently respond to any emergency.

2.3 In the event that a District levee on which a Department Railing is or will be located, shifts, subsides, erodes, or otherwise becomes unsuitable for placement of a Railing, District is under no obligation to repair said levee to make it suitable for Department's Railing. Additionally, District is under no obligation to maintain levees to prevent shifts, subsidence, erosion, or other actions that may compromise the levee substrate in which the Department's Railings are located and embedded except to the extent deemed necessary by District to protect the Critical Levee Section.

3. Levee Flood Control Slope Maintenance:

3.1 District will, as deemed it deems necessary, perform levee flood control slope repair and maintenance activities from the roadbed such as rip-rap, levee repairs due to slip-outs, etc., that may be difficult to achieve due to the presence of this Railing. Department agrees to perform or coordinate, at its cost, the removal and replacement of the Railing and posts (the posts will be removed only when mutually agreed to be necessary) so that District may perform its levee flood control slope repair activities from the roadbed that are made materially more difficult or expensive to perform due to the presence of said Railing and posts.

3.2 District must coordinate with Department's District 4 Maintenance Delta Regional Manager to coordinate repair activities that require removal of posts or Railing.

3.3 In the event that Railing is removed to perform levee flood control slope repair activities and that work is not completed by the end of a workday and Railing ends would remain exposed or unprotected, Department must either replace the Railing to its original condition or have K-railing placed in the opening for safety. Department's District 4 Maintenance will store K-railing at its maintenance yard at [enter MTCE yard location here] to be used in conjunction with District's activities when needed and will arrange for its delivery and placement. Every reasonable attempt will be made to avoid the removal of any existing Railing end treatments because they are anchored in concrete and it will be very expensive to replace those treatments, provided, however, that no significant additional costs to the District would result.

4. Processes:

4.1 Coordination, Approval, and Notification processes necessary to perform operation, maintenance, and repair activities by Department and/or District, shall be developed and agreed upon by Department and District. These processes shall be followed to ensure the effectiveness of the activities conducted and the safety of the public, and parties involved recognizing that Department has as its primary concern the safety of the traveling public and the District has as its primary concern the safety of those parties and resources protected by the levee.

4.1.1 Coordination Process:

4.1.1.1 Department and District shall coordinate planned operational, maintenance, and repair activity schedules, lane closure permits, unplanned maintenance activity, encroachment permits, and the like that are necessary to conduct any maintenance activities by Department and/or District (prior to beginning such activities unless emergencies or weather conditions require otherwise).

4.1.2 Approval Process:

4.1.2.1 In the event of a conflict between Department and District, both parties agree to resolve all issues cooperatively with a mutual understanding of the responsibilities of maintaining the safety of the public by ensuring the integrity of both the levee and the roadway.

4.1.3 Notification Process:

4.1.3.1 Department's District 4 Maintenance Delta Region Manager will be the liaison for District for obtaining such permits for the coordination of District's levee maintenance activities as outlined in Section 4.1.1 of this Agreement.

4.1.3.2 Except in emergencies, District and Department shall give reasonable notice to each other regarding any changes to agreed upon operational, maintenance, and repair activities.

4.1.4 General Process:

4.1.4.1 When performing work coordinated under this Agreement, Department shall make adequate provisions for the protection of the traveling public and shall employ Traffic Control Measures, to which District shall conform. Department shall also provide, deliver, and place such barricades and safety devices as are required for maintenance activities on the State highway. District shall make adequate provisions for the protection of those protected by the levees in conjunction with District activities. Department will provide, deliver, and remove K-railing for District's use that will be stored at Department's District 4 Maintenance Yard located at [enter address here]

4.1.4.2 All work shall be planned, when possible, and carried out so there will be minimum inconvenience to the traveling public.

4.1.4.3 All work shall conform to existing standards of maintenance activities as defined in permits.

4.1.5 All Processes:

4.1.5.1 Neither Department nor District shall unreasonably delay or fail to coordinate, withhold approval, or notify the other party of operational, maintenance, or repair activities.

4.1.5.2 Each Party will notify the other Party of its desire to coordinate or obtain approval for operational, maintenance, or repair activities. Failure of the Department or the District to respond within 35 days of receiving a request to coordinate operational, maintenance, or repair activities or obtain that requested approval, shall be considered unreasonable and will entitle the Party that did not receive notice or a response, to charge and receive from the offending party actual direct costs incurred from such failure or delay.

5 Emergency Operations:

5.1 Department, District, and Board shall provide a copy of their existing and future emergency operation plans to one another to be used as a guide toward the actions taken by each party during an emergency. This Agreement hereby references these emergency operations plans as the agreed procedures to be taken in the event of an emergency. Such plans should set forth an outline of the respective responsibilities within the Department, District, or Board, which will facilitate quick and efficient response to any emergency to minimize adverse impacts to the levees, roadways, the traveling public, and regional commerce. Such plans should also provide a central focal point for all emergency activities within the Department's, District's, or Board's responsible boundaries.

5.2 Emergency procedures are intended to be flexible enough to ensure that all situations are properly handled.

5.3 The emergency operations of the parties to this Agreement are to be guided by the Standardized Emergency Management System, hereinafter called "SEMS", which was mandated by Senate Bill 1841. SEMS, is the system required by Government Code 8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in the State of California.

5.4 Minor emergencies, deemed critical by Department or by District, may preempt coordinated scheduled activities.

6 Assignment, Disputes, Claims, Permits:

6.1 In the event that District responsibility for levee maintenance is terminated (for whatever reason) and that responsibility has been transferred to the Board, ~~or~~ the Department of Water Resources (DWR), or some other entity, then the Board, ~~or~~ DWR, or that other entity will at their option, agree to the assignment by District to its successor of all the rights and obligations of District in this Agreement.

6.2 This Agreement shall be effective upon signature of the parties and shall remain in effect so long as there is a need for levee and highway maintenance.

6.3 Any issues requiring resolution shall be mediated by the Board ~~and a mediator~~ after all other administrative efforts of resolution have been exhausted by the parties involved; provided, that mediation does not compromise or terminate the rights of all parties to seek legal relief in a court of appropriate jurisdiction.

6.4 No funds or resources are encumbered against this Agreement and the obligations of the Department and the District are subject to the adoption of each Annual State Budget Act and the District's operating budget, respectively. Department's financial obligations to the District, if any, are subject to District providing adequate proof, in a written claim against the Department, that the incremental costs incurred by the District were due to the adverse presence or impact of the Railing. If the Department can demonstrate that within the prior 12 months it provided assistance to the District, which was not required due to the presence of the Railing, the costs associated with the assistance may be deducted from District's claim. ~~District shall list and deduct from the costs incurred by the District and claimed against the Department any credits accumulated as cost savings by District due to Department's assistance as part of any routine or emergency maintenance or repair of the levee. District's claim against the Department may be submitted by District at the end of each fiscal year as a Board of Control claim.~~ District shall submit its claim to the Board of Control and may

accumulate costs incurred over a period of not more than 12 months before being submitted. Department's deductions may likewise accumulate over a period of not more than 12 months. Any claims for costs or deductions incurred more than 12 months prior to submission are deemed waived and unrecoverable. It is agreed that the need for such claims shall be diligently avoided through cooperative assistance of Department to the extent possible. Except as provided in Section 6.10, The only issue in a claim proceeding shall be the adequacy of the proof by District called for above.

Formatted: Bullets and Numbering

- 6.5 The Parties agree that by entering into this Agreement that (a) no rights are being waived by any Party, (b) no new obligations, other than those specifically provided for in this Agreement, are being assumed, and (c) as provided by Section 6.10, each Party preserves its right to seek legal action against the other Party(ies) to obtain final resolution as to the respective priorities for the maintenance, repair and improvement of the levee and of the highway, and to obtain such modification of this JUA as that resolution may require. Department shall not claim to acquire any rights as against District, except those provided herein, by the installation and maintenance of the Railing.
- 6.6 Department acknowledges that Railing was installed on parts of SR 160 beyond those parts, and including districts, other than those originally contemplated in Permit No. 17035 GM. Department will not oppose those omitted districts, specifically Reclamation Districts 341 and 349, petitioning the Board to amend Permit No. 17035 GM to include Districts 341 and 349 within Special Condition Sixteen of that Permit. ~~Department agrees to request and support the amendment of Permit No. 17035 GM, Special Condition Sixteen, to include Reclamation Districts 341 and 349. Additionally,~~
- 6.7 If any claim of liability is made against District arising out of Department's installation, removal, maintenance, or presence of the Railing, Department shall defend, indemnify, and hold harmless District from each and every claim.
- 6.8 Neither Department nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by District in connection

with any work, authority or jurisdiction delegated to District under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, District shall fully defend, indemnify and save harmless Department and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by District in connection with any work authority or jurisdiction delegated to District under this Agreement.

6.7 Neither District nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Department in connection with any work, authority or jurisdiction delegated to Department under this Agreement. It is understood and agreed that, pursuant to Government Code Section 895.4, Department shall fully defend, indemnify and save harmless District and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by Department in connection with any work authority or jurisdiction delegated to Department under this Agreement.

6.8 If Department or District assert in a Board of Control claim proceeding an argument based upon which entity has the senior right of way for its road or levee, respectively, the asserting entity shall first be bound to file an action seeking declaratory relief as to whether Department or District has the senior right of way for its road or levee, respectively. Such action shall cover all levees within the District addressed by this Joint Use Agreement. Any final judgment on this issue may be introduced into the claim proceeding described in Section 6.4 and shall be considered by the Board of Control in determining the validity of District's claim. The action for declaratory relief shall be filed in the Sacramento Superior Court and shall be limited to the issue described above. The final judgment shall be res judicata as to any further action on this issue. In any such action in which the defendant prevails, the defendant shall be entitled to reasonable attorney's fees from the plaintiff. If Department

June 30, 2005
Final? Draft

prevails as the senior party, the Department agrees it shall not be entitled to reimbursement from District for any claims previously paid.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS
AGREEMENT AS OF THE DATE HEREIN ABOVE APPEARING.

The Parties of this Agreement represent that the undersigned individuals executing this
Agreement on their respective behalf are fully authorized to do so by law or other appropriate
instructment and to bind upon said Parties to the obligations set forth herein.

CALIFORNIA DEPARTMENT
OF TRANSPORTATION

JODY ELONERGAN
Department, Director of District 3
CALIFORNIA DEPARTMENT
OF TRANSPORTATION

LOCAL RECLAMATION DISTRICT

BART DESAI
Department, Maintenance Division Chief of
District 4

[Enter Appropriate Name Here]
[Enter Title here]

CALIFORNIA DEPARTMENT
OF TRANSPORTATION

Joe Caputo
Department, Maintenance Division Chief of
District 3

DEPARTMENT OF TRANSPORTATION

DISTRICT 3

OFFICE OF PROGRAM/PROJECT MANAGEMENT

2388 GATEWAY OAKS DRIVE

SACRAMENTO, CA 95833

PHONE (916) 274-0657

FAX (916) 274-0684

TTY (530) 741-4509

*Flex your power!
Be energy efficient!*

September 24, 2002

03-SAC-160 PM L4.2/20.9
Install MBGR along SR 160
03117-447401

State Reclamation Board
Stephen Bradley - Chief Engineer
1416 Ninth Street
Sacramento, CA 94236

Dear Mr. Bradley:

Enclosed for approval is the Memorandum of Understanding (MOU) as it relates to the installation of Metal Beam Guardrail along Hwy 160. Please sign both original copies, keep one for your records and return the other for my records. The approved State Reclamation Board Permit (No. 17035 GM) requires this MOU under Special Condition TWENTY-SIX dated June 7, 2001. We have incorporated all the requested modification to the MOU. Should you have any further comments or concerns, please contact me at (916) 274-0657.

Sincerely,

A handwritten signature in cursive script, reading 'Doris Alkebulan'.

Doris Alkebulan
Project Manager

STATE OF CALIFORNIA—BUSINESS TRANSPORTATION AND HOUSING AGENCY

GRAY DAVIS, Governor

DEPARTMENT OF TRANSPORTATION

DISTRICT 3
703 B STREET
P. O. BOX 911
MARYSVILLE, CA 95901-0911
PHONE (530) 741-4233
FAX (530) 741-4245
TTY (530) 741-4509



*Flex your power!
Be energy efficient!*

September 23, 2002

03-SAC-160 PM L4.2/20.9
Install MBGR along SR 160
03117-447101

State Reclamation Board
Peter D. Rabbon - General Manager
1416 Ninth Street, Room 1601
Sacramento, CA 94236

Dear Mr. Rabbon:

MEMORANDUM OF UNDERSTANDING

1. This "Memorandum of Understanding" (MOU) is made effective this August 23, 2002, between the State of California, Department of Transportation (Department) and the State of California, Reclamation Board (SRB). On June 7, 2001, the SRB issued Permit No. 17035GM to the Department, herein called the "Permit", to permit the placement of metal beam guardrailing (MBGR) along the riverside of the levee on State Route 160 (SR 160), 4.2 miles north of the Sacramento County Line to Paintersville Bridge (Br. No.: 24-0053). Special Condition Twenty-Six of the Permit requires the permittee to enter into a MOU with the SRB prior to start of construction of the proposed project. This MOU shall provide a means of resolution, satisfactory to the SRB, of unresolved issues concerning the effects of the project on levee operations, maintenance and repair, while utilizing existing resources, by the Local Reclamation Districts (Districts) due to the installation of the Department's MBGR.

Mr. Rabbon
September 24, 2002
Page 2 of 3

- II. This MOU constitutes solely a guide to the respective obligations, intentions, and policies of the parties involved and does not authorize funding or other resources, nor is it a legally binding contract. Funding commitments by the Department providing for the deposit of funds or specific work phases or project effort committing equipment or personnel time will be covered by one or more separate cooperative agreements or other subsequent binding contracts as outlined herein. This MOU will remain in effect and satisfy the requirements of the Reclamation Board Special Condition Twenty-Six of the Permit, unless terminated in writing upon 30-days written notice by either party. At termination, the parties will meet and discuss resolution of any unresolved issues concerning the effects of the project on levee operations, maintenance and repair in order to comply with Special Condition Twenty-Six.
- III. This segment of State Route 160 runs through the region of the following Districts which are represented by the SRB's decision permitting the installation of the MBGR:
- Brannan-Andrus Levee Maintenance District (BALMD)
 - Reclamation District No. 341 (Sherman Island)
 - Reclamation District No. 349
 - Reclamation District No. 3 (Grand Island)
- IV. The Department and Districts each asserts the rights to the use of the levee crown which will be occupied by the MBGR. Therefore, the following process has been identified to determine the relationship of the parties that clarifies how the existence of the barrier and the maintenance of the levee can be accommodated by mutual agreement:
- A. It is agreed between Department and the SRB that Permittee (Department) will enter into joint use agreements with each of the respective Districts, setting forth the way in which maintenance activities of the Districts and maintenance of the barrier by the Department will be mutually accommodated. The joint use agreements must resolve the issues concerning the effect on levee operations, maintenance and repair due to implementation of the proposed project in a manner satisfactory to the SRB, and such joint use agreement will be completed within three months.
 - B. The Joint Use Agreements will be negotiated on the basis that all maintenance operations will be conducted utilizing the Department's and the District's existing resources, when possible.
 - C. The Department and Districts will cooperatively work together in the establishment and approval of the joint use agreements.


Mr. Rabbon
September 24, 2002
Page 3 of 3

Sincerely,



JODY E. LONERGAN
District Director

I CONCUR:



Date: 70/9/02

PETER D. RABBon
General Manager
State Reclamation Board

cc: Brannan-Andrus Levee Maintenance District (BALMD)
Reclamation District No. 341 (Sherman Island)
Reclamation District No. 349
Reclamation District No. 3 (Grand Island)
George Basye - Downey, Brand, Seymour, & Rohwer Attorneys
Stephan Bradley - State Reclamation Board
Delta Protection Commission

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION – MS 57

1120 N STREET, SACRAMENTO, CA 95814

P. O. BOX 1438, SACRAMENTO, CA 95812-1438

PHONE (916) 654-2630

FAX (916) 654-6128

TTY (916) 654-4086

*Flex your power!
Be energy efficient!*

ORIGINAL

January 5, 2005

Jesse Barton
Law Office of Daniel F. Gallery
926 J Street, Suite 505
Sacramento, CA 95814

Dear Mr. Barton:

In re: Proposed Agreement Regarding State Route 160 Safety Rail Project

I have reviewed the complete document together with those changes you had proposed incorporating the allocated responsibility and indemnities as between the parties.

My recommended changes are found in the attached extract of the latter part of that Agreement, beginning with Section 6.4. Said Section 6.4 has been structured to include as credits due the Department, the accumulated costs incurred for traffic control and other assistance given the Districts. Excluded from that potential credit base are costs relative to any actual removal of Railing, Railing replacement, and the temporary replacement and removal of K-rail since those are aspects of new work that we concede is tied to the Department's subject project and are not costs for which credits should be sought. I have also included a provision whereby District claims not asserted within a five fiscal year period (ending each June 30th) would be deemed waived and unrecoverable since the Department must have both knowledge of the exact extent of any claim outstanding, but also adequate opportunity to prepare and document its responses.

Finally, you had included new language within the last draft of Section 6.4 which provided that the only issue in a claim proceeding would be the adequacy of the proof of costs incurred by the Districts. I have spent some time discussing this matter with my client at our Marysville District Office and with the Chief Counsel for the Department and we are unable and unwilling to waive such rights as may be subsequently discovered which would otherwise exempt the Department from those costs. Such a discovery would include the finding of new documents, records and or information that would indicate a clearer primacy of first in place, first in time, for a State Highway/County Road/Wagon Road system that predated any levee construction work. At the current time, while we are not asserting such a defense (though we firmly believe that to be the case), the Department will proceed with execution of these agreements and reserve the right to raise a future defense at any subsequent time.

Jesse Barton
January 5, 2005
Page 2

I have revised Section 6.5 to authorize Districts 341 and 349 to petition the Board to amend the issued Permit to include those Districts within Special Condition 16 of Permit number 17035GM and the Department has affirmatively stated it will not oppose the amendment of the permit for that purpose. Please copy me with copies of those petitions.

I've taken the formerly combined indemnification language and split it into two new Sections, 6.6 and 6.7, providing reciprocal indemnification provisions with respect to actions of the District and the actions of the State. Both of these sections conform to the standard indemnification language incorporated in all Department executed inter-agency and cooperative agreements with cities, counties and districts statewide.

Should you accept these proposed changes once you have had a chance to review them, the Department is prepared to execute the necessary number of agreements with the various affected Districts, including those new added Districts 341 and 349 once the Permit is amended. In each case, we will need a minimum of 4 signed wet ink copies from each signatory District, one of which is to be returned to the affected District and the others to be distributed internally within our file and record centers at the Marysville District Office, Headquarters and Accounting so as to assure that these agreements are recoverable. Each agreement will be issued with an assigned Departmental (District 3) cooperative agreement number for sequencing proposes. If your client requires more than one signed original copy, please advise me as to how many additional copies you are requesting.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. Bassett", followed by a stylized flourish or star-like mark.

WILLIAM B. BASSETT
Attorney

Attachments

c: Gary Sidhu, Chief, Office of Project Management, Phone (530) 740-4846
Doris Alkebulan, Senior Transportation Engineer, Phone (916) 274-0657

6.4 No funds or resources are encumbered against this Agreement and the obligations of the Department and the District are subject to the adoption of each Annual State Budget Act and the District's operating budget, respectively. Department's financial obligations to the District, if any, are subject to District providing adequate proof, in a written claim against the Department, that the incremental costs incurred by the District were solely due to the adverse presence or impact of the Railing. District shall list and deduct from the costs incurred by the District and claimed against the Department any credits accumulated as cost savings by District and reported accumulated costs incurred by Department for traffic control and other assistance given District (but excluding only those Department costs due to Railing removal, Railing replacement, and the temporary emplacement and removal of K-rail substituting for Railing) as part of any routine or emergency maintenance or repair of the levee. Unresolved District's claims against Department may be accumulated by District over a period of not more than five fiscal years before being submitted as a Board of Control claim; and any of those claimed District costs (incurred more than five (5) years prior to a claim filing date are deemed waived and unrecoverable. It is agreed that the need for such claims shall be diligently avoided through cooperative assistance between District and Department to the extent possible. The only issue in a claim proceeding shall be the adequacy of the proof of costs incurred by District as provided for hereinabove.

6.5 Department acknowledges that Railing installed after issuance of the Permit included parts of SR160 beyond the limits of those Districts expressly named in the Permit,

including Districts 341 and 349 (~~between post miles _____ and _____~~), and that those Districts 341 and 349 may petition the Board to amend the Permit to include Districts 341 and 349 within Special Condition Sixteen of Permit No. 17035 GM and Department will not oppose that amendment.

6.6 Neither Department nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by District in connection with any work, authority or jurisdiction delegated to District under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, District shall fully defend, indemnify and save harmless Department and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code section 810.8) occurring by reason of anything done or omitted to be done by District in connection with any work authority or jurisdiction delegated to District under this Agreement.

6.7 Neither District nor any officer or employee thereof is responsible for any damage or liability occurring by reason of anything done or omitted to be done by Department in connection with any work, authority or jurisdiction delegated to Department under this Agreement. It is understood and agreed that, pursuant to Government Code section 895.4, Department shall fully defend, indemnify and save harmless District and all its officers and employees from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined in Government Code

section 810.8) occurring by reason of anything done or omitted to be done by Department in connection with any work authority or jurisdiction delegated to Department under this Agreement.